Nos. 84-1493 and 84-1509

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In the Supreme Court of the United States

OCTOBER TERM, 1985

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

FINANCIAL INSTITUTION EMPLOYEES OF AMERICA, LOCAL 1182, CHARTERED BY UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, AFL-CIO, ET AL.

SEATTLE-FIRST NATIONAL BANK, PETITIONER

v.

FINANCIAL INSTITUTION EMPLOYEES OF AMERICA, LOCAL 1182, CHARTERED BY UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, AFL-CIO, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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QUESTION PRESENTED

Whether the Board reasonably concluded that all bargaining unit employees, not just union members, must be afforded an opportunity to vote on the affiliation of their bargaining representative with an international union before the newly affiliated union has a right to continued recognition as the unit employees' exclusive bargaining representative.

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BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-26a)[1] is reported at 752 F.2d 356. The decisions and orders of the National Labor Relations Board (Pet. App. 27a-32a; 34a-42a; 45a-48a) are reported at 241 N.L.R.B. 751, 245 N.L.R.B. 700, and 265 N.L.R.B. 426.

JURISDICTION

The judgment of the court of appeals (Pet. App. 59a) was entered on August 2, 1984. A petition for rehearing was denied on December 26, 1984 (Pet. App. 60a). The petitions for certiorari were filed on March 21, 1985 (No. 84-1493) and March 25, 1985 (No. 84-1509) and were granted and consolidated on May 13, 1985 (J.A. 236-237). The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

STATUTES AND REGULATIONS INVOLVED

The relevant provisions of the National Labor Relations Act, 29 U.S.C. 151 *et seq.*, and of the Board's Rules and Regulations, 29 C.F.R. Pt. 102, are set forth *infra*, pp. 1a-3a.

STATEMENT

1. The Firstbank Independent Employees Association (FIEA) is an independent labor organization established to represent the employees of Seattle-First National Bank (Bank) in collective bargaining (J.A. 51-52). Only Bank employees are eligible to become FIEA members (J.A. 51-52). FIEA is governed by an executive council consisting of members elected from

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[1] "Pet. App." refers to the petitioner's appendix in No. 84-1493.

each of six regions, which correspond to the Bank's administrative subdivisions, and of FIEA's nine officers—president, six vice presidents (one for each region), a secretary, and a treasurer (J.A. 56-58). Collective bargaining agreements are negotiated by a committee appointed by the president and are ratified by majority vote of the membership (J.A. 61, 65). Dues are set by the executive council with the approval of the membership (J.A. 61). FIEA's constitution may be amended by a majority vote of its members (J.A. 66-67).

FIEA was certified by the Board in 1970 as the exclusive bargaining representative of a unit consisting of all the Bank's employees in the State of Washington (Pet. App. 27a; J.A. 4-5). FIEA negotiated successive collective bargaining agreements with the Bank, the last expiring in 1977 (J.A. 4). In 1977 the FIEA executive council decided to seek affiliation with the Retail Clerks International Union, and a union affiliation election was scheduled for February 1978. Prior to the election, all bargaining unit employees were informed of the proposed affiliation and told that only those who were FIEA members as of January 19, 1978, would be eligible to vote. Pet. App. 28a-29a; J.A. 11-12, 71-74. At the time of the election, 2624 of the 4790 unit employees were FIEA members; 1206 voted for affiliation and 774 voted against (Pet. App. 29a; J.A. 19-20, 83-87).

On April 1, 1978, FIEA was chartered by the international union as Financial Institution Employees of America, Local 1182 (hereafter the Union) (J.A. 13, 88-89). The charter expanded the Union's purpose to include "a thorough organization of employees [employed by] banks, credit unions or other financial institutions in the city of Seattle and the entire State

of Washington," opened the Union's membership to "any person * * * in accordance with the constitution and laws of the International Union," and required the Union to "conform[] to the Constitution and laws of the Retail Clerks International Constitution" (*ibid.*).[2]

2. Upon receiving its charter from the international union, the Union filed a petition with the Board, pursuant to Section 102.60(b) of the Board's Rules, 29 C.F.R. 102.60(b), seeking amendment of its certification to reflect its affiliation. The Board initially granted the amendment, rejecting the Bank's contentions that the affiliation vote was invalid because only FIEA members were allowed to vote,[3] and that the affiliation represented a substantial change

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[2] The international constitution requires affiliated local unions to have certain officers (president, secretary-treasurer, recorder, and at least three vice-presidents), defines their powers and duties, requires them to be elected by all the union's members, and provides that together these officers constitute an executive board that meets monthly to govern the union (J.A. 148-153). The constitution sets minimum initiation fees and monthly dues (J.A. 138, 159), requires that a certain portion of those fees and dues be remitted to the international union (J.A. 138-139), and allows the international union to impose assessments and to increase minimum dues and other fees (J.A. 109, 138-139, 159). Economic action such as strikes must be approved by a two-thirds vote of the affected membership and by the international president (J.A. 168-170). The international may impose a trusteeship on the local union (J.A. 115-116) and must approve any amendments to the local union bylaws (J.A. 146). At the time of the FIEA affiliation, the international union waived minimum initiation fees, monthly dues, and monthly per capita contributions for a period of one year (J.A. 69-70).

[3] This contention was correct under the law at the time the vote was taken (see n.15, *infra*).

in the certified bargaining representative which raised a doubt concerning the Union's continuing majority status that only a Board-conducted election could resolve. The Board relied on its then-recent decision in *Amoco Production Co. (Amoco III)*, 239 N.L.R.B. 1195 (1979), in which the Board had held that the affiliation of an independent union with an international union was an internal union matter on which nonmembers were not entitled to vote and that it did not provide a reason for doubting the union's continued majority status. Pet. App. 30a-32a.[4]

3. The Bank subsequently refused to recognize and bargain with the Union. Declining to reconsider its certification decision, the Board found that the Bank violated Section 8(a)(5) and (1) of the Act, 29 U.S.C. 158(a)(5) and (1), and ordered the Bank to recognize and bargain with the Union. Pet. App. 34a-42a.

The Bank petitioned for review of the Board's order in the Ninth Circuit, and the Board cross-applied for enforcement. While the case was pending, the Fifth Circuit remanded the Board's decision in *Amoco III* for a statement of facts supporting the Board's conclusion in that case that there was substantial continuity between the pre- and post-affiliation labor organizations (*Amoco Production Co.* v. *NLRB*, 613 F.2d 107, 111-112 (5th Cir. 1980)). The Board requested remand of the instant case on the ground

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[4] After the certification proceedings before the Board, the Retail Clerks merged with the Amalgamated Meat Cutters and Butcher Workmen of North America to form the United Food and Commercial Workers International Union (UFCW), and the affiliated local's designation changed accordingly (Pet. App. 2a n.1). No issue concerning that merger is presented here.

that it was analytically dependent on *Amoco III*, and the court of appeals granted the Board's request on June 27, 1980. Pet. App. 3a.

4. On remand in the *Amoco* case, the Board, reversing its earlier position, concluded that affiliation is not a purely internal union matter but affects the right of all bargaining unit employees to choose their exclusive bargaining representative and that therefore all unit employees, not just union members, must be allowed to vote on the affiliation. *Amoco Production Co. (Amoco IV)*, 262 N.L.R.B. 1240 (1982) (Pet. App. 49a, 52a-54a).[5] The Board added that, absent a unit-wide vote, it would not reach the issue of whether there was sufficient similarity between the old and newly affiliated union so that the latter could be deemed a continuation of the former (Pet. App. 51a-52a).

With respect to the requirement that all unit employees be permitted to vote, the Board in *Amoco IV* explained that it is "basic to the collective-bargaining process that the selection of a bargaining representative be made by the employees in the bargaining unit" (Pet. App. 53a). The Board added that it was insufficient merely to afford unit members an opportunity to join the union and thereby participate in the affiliation vote—as *Amoco III* had done—because "Section 7 [of the Act] clearly gives employees the choice * * * to refrain from engaging in [union] activities" (Pet. App. 53a-54a).

On the basis of its decision in *Amoco IV*, the Board held that the affiliation election in the instant case was inadequate to justify amending the FIEA certifi-

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[5] In *Local 4-14, Oil Workers Int'l Union* v. *NLRB*, 721 F.2d 150 (5th Cir. 1983), the Fifth Circuit upheld the Board's decision in *Amoco IV*.

cation, and ordered that both the Union's petition to amend the certification and the refusal to bargain complaint against the Bank be dismissed (Pet. App. 45a-48a).

5. Upon the Union's petition for review, the court of appeals, with Judge Wright dissenting, concluded that the Board's rule in *Amoco IV* that all bargaining unit employees are entitled to vote in a union affiliation election was "irrational" and "inconsistent with * * * longstanding federal labor policy" (Pet. App. 10a). It thus remanded the case to the Board for further proceedings. The court found that "three reasons compel[led its] conclusion": (1) the new rule "is inconsistent with the longstanding federal labor policy * * * to avoid unnecessary interference in internal union affairs"; (2) the rule "is inconsistent with the strong national labor policy of maintaining stability in the bargaining representative"; and (3) the rule is "irrational because the Board's existing * * * procedures adequately protect employee rights without imposing on union members' rights or otherwise being inconsistent with the [Act]" (Pet. App. 10a-11a, 16a).

The court found that the new rule unjustifiably interferes with the union's internal decision to affiliate because it "mandates that a continuity determination may not be conducted until after a unit-wide vote is taken." In the court's view, "[t]his puts the cart before the horse" because the "interference" resulting from requiring such a unit-wide vote could be justified "[o]nly *after*" the Board finds an absence of continuity between the pre- and post-affiliation unions. Pet. App. 16a (emphasis in original). The court further found that the Board's new rule "runs completely counter to the policy of promoting stability

in the bargaining representative" (Pet. App. 18a), on the theory that, by allowing an employer to refuse to bargain with a post-affiliation union in the absence of a unit-wide vote, it "effectively decertifies [the] union before the Board can establish any basis for a union's loss of majority status." Pet. App. 19a. Finally, the court found that the new rule was "irrational" because the Board's previously followed "due process and continuity" procedures were adequate to protect the rights of union members and employees. In the court's view, the existing "due process" requirement—which permitted the affiliation vote to be restricted to union members, but which required that vote to be conducted in accord with minimum democratic guarantees—was designed, and in fact was adequate, to protect the rights of union members. And the "continuity requirement" was adequate to protect the rights of all bargaining unit employees (both union members and nonmembers) by requiring sufficient similarity between the pre- and post-affiliation unions to insure that a majority of the bargaining unit continued to desire representation by the post-affiliation union. Pet. App. 19a-21a.

Judge Wright, in dissent, noted that the Fifth Circuit had enforced the Board's order in *Amoco IV*, and agreed with that court that the new rule was a rational interpretation of the Act, which was within the Board's expertise and discretion in establishing procedures to ensure the fair and free choice of a bargaining representative by all employees (Pet. App. 24a-25a). He stated that, by reaching the opposite conclusion, the majority "engage[d] in the balancing of interests that is the province of the Board, not the courts" (*id.* at 25a).

The court denied the Bank's petition for rehearing and suggestion for rehearing en banc, with six judges

dissenting from the denial of en banc rehearing (Pet. App. 60a-62a).

SUMMARY OF ARGUMENT

Section 7 of the National Labor Relations Act guarantees employees the right to bargain with their employer through representatives of their own choosing. Thus, all employees in a bargaining unit, whether union members or not, have a right to participate in the selection of the union that will function as their bargaining representative. When a question of representation arises, it is resolved through a Board supervised election, and the winner of that election is certified by the Board as the exclusive bargaining agent for all unit employees. The question here is whether the Board acted reasonably in deciding that it will not amend a certification at the request of a union reorganized by affiliation unless that affiliation has been approved by a unit-wide vote.

Two separate grounds support the rationality of the Board's position: The Board's certification expresses a Board judgment that the certified union is the one chosen by all employees to represent them; an affiliation decision involving all unit employees clearly provides a more reliable basis for the Board to conclude that the newly affiliated union is entitled to succeed to the existing certificate than does an affiliation decision in which only the union members participate. Moreover, the affiliation decision has sufficient potential for altering the relationship of all employees—not just union members—to their exclusive bargaining representative to make it appropriate to provide all employees with an opportunity to express their views on the proposed change. For

example, in the affiliation of an independent union with an international union—the change involved here—the local union loses some of its autonomy. The local must conform to the international's constitution and bylaws, which will usually involve changes not only in the jurisdiction, resources and financial obligations of the union, and the number and duties of its officers, but also may well, as here, subject decisions concerning strikes and collective bargaining agreements—matters of crucial concern to *all* bargaining unit employees—to the approval of the international union. In light of the potential effects of these changes, it is reasonable for the Board to require that all unit employees have the opportunity to express their views before the Board will consider a request to amend the existing certification. That request, which seeks the Board's imprimatur on the affiliation decision in order to bind both the employer and the non-union member employees to the union's choice, takes the affiliation decision out of the realm of purely internal union decisions.

Even if the decision to restrict the affiliation vote solely to the union membership were simply an internal union affair, the Board's refusal to consider amending a certification on the basis of such a vote would not improperly intrude into internal union matters. Certification itself is scarcely such a matter. Moreover, internal union rules that run afoul of the policies of the Act cannot be enforced. Here, the Board reasonably concluded that the union-members-only limitation was inconsistent with the Section 7 guarantees of the rights to choose a bargaining representative and to refrain from union activity.

Nor is the Board rule unnecessarily duplicative, as the court of appeals majority believed, because of the possibility that a Board-conducted election might be

required even after the unit-wide vote in favor of affiliation. If, on the particular facts before it, the Board were to conclude that a reorganization had involved such a complete change in the nature of the bargaining representative that the formerly certified union no longer existed, it would require a Board-conducted election, even though the affiliation issue had previously been submitted by the union to all the unit employees. But that situation is equivalent to the initial selection of a bargaining representative, and merits the full panoply of procedures—including the opportunity for employer campaigning—that are available in such situations.

Contrary to the opinion below, the Board's policy promotes, rather than disrupts, stable bargaining relationships, because it insures that the bargaining unit's views on the affiliation are secured *before* the proposed affiliation is consummated. If the unit disapproves of the affiliation, the independent union can retain its certification by forgoing affiliation—an option not available if the Board first makes a no-continuity finding and then directs a new election that the union loses. On the other hand, if the unit favors the proposed affiliation, the union and the Board will be able to proceed with full knowledge of those views. Even if the Board nevertheless determined that there was such a lack of continuity that a full Board-conducted election was necessary, a union whose affiliation proposal had received the informal approval of the unit employees could approach that election with confidence. In either event, the fact that the full bargaining unit has expressed its views at an early stage in the proceedings provides substantial assurance that subsequent actions will not lead to the kind of employee and employer dissatisfaction that upsets bargaining relationships.

In sum, the Board's new rule is an entirely reasonable method of assuring that its certifications in fact serve the purpose for which they are intended: the effectuation of the wishes of the majority of the entire bargaining unit. Particularly in light of the wide discretion of the Board in assuring fair procedures in the selection of bargaining representatives, the court of appeals erred in rejecting the Board's rule.

ARGUMENT

THE BOARD REASONABLY CONCLUDED THAT ALL BARGAINING UNIT EMPLOYEES, NOT JUST UNION MEMBERS, MUST BE AFFORDED AN OPPORTUNITY TO VOTE ON THE AFFILIATION OF THEIR BARGAINING REPRESENTATIVE WITH AN INTERNATIONAL UNION BEFORE THE NEWLY AFFILIATED UNION HAS A RIGHT TO CONTINUED RECOGNITION AS THE UNIT EMPLOYEES' EXCLUSIVE BARGAINING REPRESENTATIVE

A. Certification Amendment Requests Require the Board to Reconcile the Statutory Policy Favoring Union Self-Government With the Right of All Members of the Bargaining Unit to Select the Unit's Collective Bargaining Representative

Section 7 of the National Labor Relations Act, 29 U.S.C. 157, guarantees employees the right "to bargain collectively through representatives of their own choosing." Section 8(a)(5) of the Act, 29 U.S.C. 158(a)(5), implements this right by requiring an employer to bargain in good faith with the representative of its employees as defined in Section 9(a), 29 U.S.C. 159(a), which confers exclusive representative status upon the union selected by a majority of the employees in an appropriate bargaining unit. Section 9(c)(1) of the Act, 29 U.S.C. 159(c)(1),

requires the Board to "direct an election by secret ballot and * * * certify the results thereof" whenever it finds that "a question of representation" has been raised as to whether the employees desire to select a union representative or to oust or replace a previously selected representative.[6] All unit employees

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[6] Whether "a question of representation" exists depends on a number of criteria that together define the circumstances in which the Board will conduct a formal election to determine the statutory bargaining representative. As a threshold matter, a labor organization seeking initial certification or displacement of an incumbent representative must show that a substantial proportion (30%) of the bargaining unit employees want to be represented by the petitioning organization. 29 C.F.R. 101.18; *Esso Standard Oil Co.*, 124 N.L.R.B. 1383 (1959); R. Gorman, *Basic Text on Labor Law* 52 (1976) (purpose of this requirement "is to limit the drain on administrative resources and the disruption within the plant attendant upon an election campaign").

There are also such further considerations as whether an election is barred because of a prior election or certification, or an existing collective bargaining agreement, and whether the proposed bargaining unit is appropriate. See generally Office of the General Counsel, NLRB, *An Outline of Law and Procedure in Representation Cases* 59-121 (GPO 1974); R. Gorman, *supra*, at 40-59. Once a bargaining agent has been selected, the employer, the employees, and the public are assured a period of repose from the " 'excitments, strifes and animosities which characterize the hustings,' " *NLRB* v. *A.J. Tower Co.*, 329 U.S. 324, 331 (1946). Thus, certification of a union as statutory bargaining representative is normally binding for one year. *Brooks* v. *NLRB*, 348 U.S. 96, 98-104 (1954). And, under the Board's contract-bar rule, an existing collective bargaining agreement generally bars an election for three years or the term of the contract, whichever is shorter. *General Cable Corp.*, 139 N.L.R.B. 1123 (1962); *NLRB* v. *Marcus Trucking Co.*, 286 F.2d 583, 592-593 (2d Cir. 1961); *Pioneer Inn Assocs.* v. *NLRB*, 578 F.2d 835, 838 (9th Cir. 1978). During these periods of enforced stability, the Board

are guaranteed the right to participate in Board-conducted elections to resolve a representation question. Well established rules and procedures insure that employees will have an opportunity to make a free choice and that the views of all competing, interested parties, including the employer, will be heard before the election is held.[7]

In addition to administering these provisions to resolve representation questions, the Board also must determine the circumstances under which a union maintains its status as statutory bargaining representative despite changes in its organization and structure, such as affiliation with an international union. *J. Ray McDermott & Co.* v. *NLRB*, 571 F.2d 850, 855-857 (5th Cir.), cert. denied, 439 U.S. 893 (1978); *Retail Store Employees Local 428* v. *NLRB*, 528 F.2d 1225, 1227 (9th Cir. 1975).[8] Unions, no less than business enterprises, frequently undergo organizational changes, such as affiliations and mergers.[9] The freedom of unions to make these changes

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will not conduct a secret ballot election, and both the employees and the employer are bound by the employees' previously designated choice.

[7] See generally 1 C. Morris, *The Developing Labor Law* 309-339 (2d ed. 1983); R. Gorman, *supra*, at 40-49. See also *Midland National Life Insurance Co.*, 263 N.L.R.B. 127, 133 (1982); *Affiliated Midwest Hospital, Inc.*, 264 N.L.R.B. 1094 (1982).

[8] This issue can arise both in representation cases where the "new" organization requests amendment of the certification issued to the "old" organization (see 29 C.F.R. 102.60(b)), and in unfair labor practice cases where the employer has refused to recognize the "new" organization.

[9] See Adams, *Labor Organization Mergers 1979-84: Adapting to Change*, 107 Monthly Lab. Rev. 21-27 (1984); *Report of AFL-CIO Committee on the Evolution of Work on the Chang-*

would be unduly impaired and "[t]he industrial stability sought by the Act would be unnecessarily disrupted if every union organizational adjustment were to result in displacement of the employer-bargaining representative relationship." *Canton Sign Co.*, 174 N.L.R.B. 906, 909 (1969), enforcement denied on other grounds, 457 F.2d 832 (6th Cir. 1972). Accord: *NLRB* v. *Katz d/b/a American Mailers*, 622 F.2d 242 (6th Cir. 1980). On the other hand, the established system of rules governing the timing and method for replacing an incumbent representative would be undermined if a completely new representative could be substituted without regard to the Board's election machinery. See *Independent Drug Store Owners of Santa Clara County*, 211 N.L.R.B. 701, 701 n.3 (1974), aff'd *sub nom. Retail Store Employees Local 423* v. *NLRB*, 528 F.2d 1225 (9th Cir. 1975). See also *Linden Lumber Division* v. *NLRB*, 419 U.S. 301 (1974) (employer normally has no obligation to recognize a union until after it has been certified as the result of a Board election).

In an effort to balance these competing considerations, the Board long has held that it will amend a certification or issue a bargaining order at the request of a union that has affiliated or undergone some other organic change only where there is reliable evidence that the change reflects the wishes of the affected employees, and where substantial continuity exists between the previously certified representative and the reorganized union. The purpose of the continuity requirement is to insure that the organizational change is not an attempt to substitute an entirely different representative in disregard of the established mechanism for making such a change.

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ing Situation of Workers and Their Unions, Daily Lab. Rep. (BNA) No. 37, at D-1, D-7 (Feb. 25, 1985).

Under this requirement, the Board holds that organizational changes that are substantial enough to create an entirely different entity raise a statutory question concerning representation, which can only be determined through the Board's formal election procedures.[10] The reasonableness of the continuity requirement was not questioned by the respondent Union or the court below and is not at issue here.

This case involves the related aspect of the Board's policy, as reflected in its *Amoco IV* rule: the Board's conclusion that even where the change is not sufficient

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[10] Whether the changes caused by affiliation are relatively minor and therefore do not disrupt continuity between the old and new organizations, or are significant and result in a new entity that can be recognized only through established procedures for certifying a new representative, is a question of fact for the Board. In making this determination the Board has considered such factors as: whether the union continues to administer the contracts to which it is a party; whether it has retained its old officers; and whether it has maintained its autonomy regarding such matters as contract negotiations, strikes, and grievances. See, *e.g.*, *J. Ray McDermott & Co.* v. *NLRB*, 571 F.2d 850, 855-857 (5th Cir. 1978); *NLRB* v. *Pearl Bookbinding Co.*, 517 F.2d 1108, 1111-1112 (1st Cir. 1975); *NLRB* v. *Commercial Letter, Inc.*, 496 F.2d 35, 39-40 (8th Cir. 1974); *Retail Store Employees Local 428* v. *NLRB*, 528 F.2d 1225, 1227 (9th Cir. 1975). The Board has in general found that affiliations do not destroy continuity of representation. See, *e.g.*, *Insulfab Plastics, Inc.*, 274 N.L.R.B. No. 126, 119 L.R.R.M. 1086 (Mar. 11, 1985); *Hamilton Tool Co.*, 190 N.L.R.B. 571 (1971); *North Electric Co.*, 165 N.L.R.B. 942 (1967); *East Ohio Gas Co.*, 140 N.L.R.B. 1269, 1270 (1963); and court cases cited above. But cf. *American Bridge Div., U.S. Steel Corp.* v. *NLRB*, 189 N.L.R.B. 119 (1971), enforcement denied, 457 F.2d 660, 663-664 (3d Cir. 1972) (Board found continuity, court disagreed); *Sun Oil Co.* v. *NLRB*, 228 N.L.R.B. 1072 (1977), enforcement denied, 576 F.2d 553, 556-558 (3d Cir. 1978) (same).

to destroy continuity and thus raise a question concerning representation, reorganization has sufficient potential for affecting the relations between nonunion unit members and their exclusive bargaining representative to require a showing that all unit members agree to the change. Accordingly, the Board will not amend a certification or issue a bargaining order at the request of the reorganized union unless there is reliable evidence that the affected employees have consented to the change.

B. The Board's *Amoco IV* Rule Constitutes a Reasonable Exercise of the Board's Authority Under the Act

1. The Board has broad discretion to establish and administer the procedures and conditions for certifying a labor organization as the statutory bargaining representation. *NLRB* v. *Wyman-Gordon Co.*, 394 U.S. 759, 767 (1969); *NLRB* v. *A.J. Tower Co.*, 329 U.S. 324, 330 (1946); *NLRB* v. *Waterman Steamship Corp.*, 309 U.S. 206, 226 (1940). This discretion extends to policing the certification the Board issues,[11] and thus to determining the conditions under which the certification will be amended to reflect a union organizational change, and, accordingly, the circumstances under which an employer will be required to bargain with a union that has undergone an organizational change. The Board's interest in the organizational change situation arises from the basic fact that the newly affiliated, or otherwise

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[11] See, *e.g.*, *NLRB* v. *Detective Intelligence Service, Inc.*, 448 F.2d 1022, 1025 (9th Cir. 1971) (clarifying scope of original unit certification); *Hughes Tool Co.*, 147 N.L.R.B. 1573 (1964) (decertifying union for executing and administering racially discriminatory collective bargaining agreement); cf. *Bell & Howell Co.* v. *NLRB*, 598 F.2d 136, 145-146 (D.C. Cir. 1979).

altered, organization seeks the Board's "imprimatur" on the new arrangement. *Amoco IV*, 262 N.L.R.B. at 1241 (Pet. App. 53a). Thus, while a union affiliation may be considered merely an internal matter to the extent that it pertains only to the ordering of the union's internal affairs, the union takes the matter out of that sphere when it seeks the aid of government to enforce that choice on those who must by law be represented by it or deal with it for purposes of collective bargaining. As Judge Kennedy recognized in dissenting from the denial of rehearing en banc below, the Board reasonably viewed "the question to be not whether the union could change its affiliation, but whether it could change its affiliation *and* remain the bargaining agent of all the employees in the unit" (Pet. App. 62a; emphasis in original).[12]

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[12] A newly affiliated or otherwise reorganized union seeks to succeed to the status of statutory representative enjoyed by its predecessor organization, not for any internal union reason, but to enjoy the full panoply of rights and protections that flow from that status. As statutory representative, the union is the exclusive representative of the employees in the bargaining unit with respect to their "wages, hours, and other terms and conditions of employment." 29 U.S.C. 158(d); *Medo Photo Supply Corp.* v. *NLRB*, 321 U.S. 678, 683-684 (1944). This authority extends to all bargaining unit employees, whether or not they are members of the union, and "extinguishes the individual employee's power to order his own relations with his employer. * * * [O]nly the union may contract the employee's terms and conditions of employment, and provisions for processing his grievances." *NLRB* v. *Allis-Chalmers Mfg. Co.*, 388 U.S. 175, 180 (1967) (footnote omitted). Accord: *Emporium Capwell Co.* v. *Western Addition Community Org.*, 420 U.S. 50, 63 (1975).

By succeeding to the certification issued to its predecessor, the successor organization also retains the protection against competing organizations embodied in the certification and con-

The Board has always required reliable evidence of employee consent before giving a newly affiliated or otherwise reorganized union governmental sanction to continue as the employees' statutory representative. Initially, the Board considered approval by bargaining unit employees as one factor in determining whether there was continuity between the previously certified representative and the newly reorganized union. See *Harris-Woodson Co.*, 85 N.L.R.B. 1215, 1216 & n.3 (1949), enforced, 179 F.2d 720, 722 (4th Cir. 1950); *Santa Clara Lemon Ass'n*, 112 N.L.R.B. 93, 94 n.3 (1955), aff'd *sub. nom Carpenteria Lemon Ass'n* v. *NLRB*, 240 F.2d 554 (9th Cir. 1957); *Emery Industries, Inc.*, 148 N.L.R.B. 51, 54 (1964); cf. *Gulf Oil Corp.*, 135 N.L.R.B. 184, 185 n.6 (1962) (Chairman McCulloch concurring because of "doubt as to whether [the change] actually reflect[s] the desire of a majority of employees in the represented unit").

Employee consent took on the status of an independent requirement in a series of cases in which the Board refused to amend the incumbent's certification where the affected employees had not been allowed to vote on the affiliation or merger at issue. *Yale Mfg. Co.*, 157 N.L.R.B. 597 (1966); *M.A. Norden Co.*, 159 N.L.R.B. 1730, 1732 (1966) ("no evidence that the employees had knowledge of, or have consented to, the proposed change"); *Rinker Materials Corp.*, 162 N.L.R.B. 1688, 1689 (1967) ("unit

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tract bar rules (see n.6, *supra*) and enjoys other significant statutory protections. See 29 U.S.C. 158(b)(4)(B) (certified representative may engage in certain secondary activity); 29 U.S.C. 158(b)(7) (certified representative may engage in recognitional picketing); 29 U.S.C. 158(b)(4)(C) (certified union protected against recognitional picketing by a rival union).

employees did not participate"). The independent nature of the requirement became explicit in *North Electric Co.*, 165 N.L.R.B. 942, 943 (1967), where the Board amended the incumbent's certification because there was continuity between the incumbent and the post-affiliation labor organization "*and it also* appears that voluntary and regular procedures under appropriate safeguards have been followed to determine the employees' wishes on the question of affiliation" (emphasis supplied).

As the Board explained in *North Electric Co.*, 165 N.L.R.B. at 942, the purpose of requiring employee approval of the change is to insure that the status of statutory representative is not conferred "where the possibility of a question concerning representation remains open because the change of affiliation took place under circumstances that do not indicate that the change reflected a majority view." [13] Thus, contrary to the court below, the purpose of what have come to be called "due process requirements" [14] is not merely "to protect union members' rights" (Pet. App. 21a), but to insure that union organizational changes reflect the desires of all the employees in the bargaining unit affected by the change. See *Newspapers, Inc.*, 210 N.L.R.B. 8, 10 n.13 (1974), enforced, 515 F.2d 334 (5th Cir. 1975) ("the Board's primary concern [is] that the unit employees have

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[13] The Board's rules provide that petitions to amend a certification are appropriate only "in the absence of a question concerning representation." 29 C.F.R. 102.60(b).

[14] The Board referred to the requirement that the change be made under democratic procedures that afforded the affected employees an opportunity to express their views as "minimum standards of due process" in *Hamilton Tool Co.*, 190 N.L.R.B. 571, 573 (1971); see also *North Electric Co.*, 165 N.L.R.B. at 944 (Members Jenkins and Zargoria, dissenting).

had an opportunity to pass upon the transfer of representation").

In *North Electric*, however, the Board was divided on the question whether an internal union referendum limited to union members is a sufficiently reliable indication of the sentiments of all the employees in the bargaining unit to justify the Board in amending a certification at the request of a union that has undergone an organizational change. The *North Electric* majority held that such a referendum *was* sufficient, provided that nonmembers were free to join the union and thus participate in the election and the debate that preceded it. 165 N.L.R.B. at 942-943. Members Jenkins and Zagoria dissented, asserting that "minimal standards of due process" required that *all* bargaining unit employees be afforded the opportunity to vote directly on "any change in designation of the bargaining representative." 165 N.L.R.B. at 944. The Board subsequently adopted the *North Electric* minority view in *Jasper Seating Co.*, 231 N.L.R.B. 1025, 1026 (1977),[15] but returned to the *North Electric* majority view in *Amoco III*, 239 N.L.R.B. at 1195 n.3. The Board is now persuaded that the *North Electric* minority view is more consonant with, and better effectuates the policies of, the Act, and it has again adopted it as the position of the Board. *Amoco IV*, 262 N.L.R.B. 1240 (1982) (Pet. App. 49a-58a).

2. The *Amoco IV* requirement that union affiliations be approved under democratic procedures which afford all unit members—union as well as nonunion—the opportunity to vote on the change rests on the

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[15] *Jasper Seating* was the governing precedent when the FIEA, in early 1978, conducted its affiliation vote in this case. Thus, under Board standards in effect at the time, the vote provided an insufficient basis for an amended certification.

Board's judgment that union affiliations affect not just union members but all bargaining unit employees, and that excluding nonmembers from the voting is inconsistent with the fundamental guarantees of the Act. *Amoco IV*, 262 N.L.R.B. at 1241; *1820 Central Park Ave. Restaurant Corp.*, 271 N.L.R.B. No. 68, 116 L.R.R.M. 1393 (July 25, 1984).[16] The Board's judgment on each point is reasonable and furthers the underlying policies of the Act.

Even where an affiliation does not result in sufficient changes in a union to create a completely new entity, such an organizational change can still significantly affect the union's representation of the bargaining unit. Thus, affiliation of an independent union with an international union requires the former to conform to the latter's constitution and any additional requirements imposed by the affiliation agreement. As here (see n.2, *supra*), affiliation can change the union's jurisdiction, alter its bylaws and constitution, change its officers and their duties, alter its financial obligations and resources, require international union approval for its strikes and collective bargaining agreements, provide for international union control over its dues, and potentially subject the new local union to trusteeship and other international union controls. These changes affect not only the internal relationship between the independent union and its members, but also the relationship be-

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[16] The Board also applies its *Amoco IV* rule where two local unions of the same international union merge (*F.W. Woolworth Co.*, 268 N.L.R.B. 805 (1984), petition for review pending, *United Food & Commercial Workers Local 568* v. *NLRB*, No. 84-1243 (D.C. Cir.)), or where a local union splits into two separate unions (*1820 Central Park Ave. Restaurant Corp.*, 271 N.L.R.B. No. 68, 116 L.R.R.M. 1393 (July 25, 1984)).

tween the independent union and all of the employees it represents in its capacity as statutory bargaining representative.

An affiliation thus necessarily has the potential for changing the relationship between the statutory representative and the represented employees. Moreover, the effect of the Board's amendment of a certification is to cloak the affiliated union with exclusive authority to represent the entire bargaining unit (see n.12, *supra*). It was accordingly reasonable for the Board to conclude that consistency with the Act's policy of affording employees full freedom to select their representative [17] requires that all unit employees have the right to vote on affiliations under procedures that at least minimally approximate those used when employees make their initial choice of a representative (pp. 12-14, *supra*). As the Board stated in *Amoco IV*, 262 N.L.R.B. at 1241 (Pet. App. 53a), "it is inconsistent to permit all unit employees to vote in a representation election, but when the question is one of affiliation with another union, to permit only union members the right to vote." [18]

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[17] See National Labor Relations Act § 1, 29 U.S.C. 151; *Hill* v. *Florida*, 325 U.S. 538, 541 (1945); *International Ladies' Garment Workers Union, AFL-CIO* v. *NLRB*, 366 U.S. 731, 737 (1961).

[18] The Board distinguished affiliation votes from strike votes, contract ratification votes and the selection of union officers —on which the union need not accord a voice to unit employees who are not union members. See *Brown* v. *Hotel & Restaurant Employees Local 54*, No. 83-498 (July 2, 1984), slip op. 2 n.3 (White, J., dissenting). The Board explained that, unlike affiliation votes, the other matters do not call for the Board to put its imprimatur on the union's decision as it does when it amends the designation of the employees' bargaining representative. *Amoco IV*, 262 N.L.R.B. at 1241 (Pet. App. 53a).

The Board also reasonably concluded that the option that *Amoco III* afforded nonunion members of the unit—the opportunity to join the union and thus to participate in the election—"shut[s] one's eyes to Section 7 of the Act [which] clearly gives employees the choice of participating in union activities or * * * refrain[ing] from engaging in those activities" (Pet. App. 53a-54a). See *Pattern Makers League* v. *NLRB*, No. 83-1894 (June 27, 1985) slip op. 9-12. The *Amoco III* option required non-union members of the unit to forgo their Section 7 right to refrain from joining the union in order to vote on the affiliation. The *Amoco IV* requirement that all unit members—union as well as non-union—be permitted to vote on a union affiliation, on the other hand, affords non-union members of the unit an opportunity to express their views on the identity of their bargaining representative without at the same time requiring them to relinquish their Section 7 right to refrain from assuming the obligations of full union membership.[19]

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[19] At the time of the affiliation at issue here, only 2624 of the 4790 employees in the affected bargaining unit were FIEA members. The almost 2200 bargaining unit employees who had exercised their Section 7 right to refrain from joining the FIEA were never given any opportunity to vote on the affiliation and its potential effect on their statutory representative and their representational rights. Thus, it is clear that the number of employees excluded was sufficient to have affected the outcome of the actual vote (1206 for affiliation, 774 against). However, the *Amoco IV* rule requires a unit-wide vote even where the number of nonmembers excluded is mathematically insufficient to have altered the result (Pet. App. 54a n.12).

C. The *Amoco IV* Rule Does Not Impermissibly Interfere With Internal Union Affairs, Is Not Unreasonably Duplicative, and Preserves Rather Than Disrupts Stable Bargaining Relationships

1. The Board's *Amoco IV* rule requires a vote of all bargaining unit employees as a precondition to enlisting the Board's power to impose the new arrangement on others. It does not preclude an independent union from limiting to its own members the determination of whether affiliation would be in the union's interest, so that unit-wide approval should be sought. Indeed, some union affiliations have been accomplished by such a two-tiered procedure. See, *e.g.*, *Ocean Systems, Inc.*, 223 N.L.R.B. 857, 857-858 (1976), enforced *sub nom. J. Ray McDermott & Co.* v. *NLRB*, 517 F.2d 850 (5th Cir. 1978), cert. denied, 439 U.S. 893 (1978); *Safway Steel Scaffolds Co.*, 173 N.L.R.B. 311 (1968). Other unions have afforded nonmembers the opportunity to vote in their internal affiliation or merger elections. See, *e.g.*, *Williamson Co.*, 244 N.L.R.B. 953, 953-954 (1979); *New Orleans Public Service, Inc.*, 237 N.L.R.B. 919, 920 n.5 (1978); *Newspapers, Inc.*, 210 N.L.R.B. 8, 9 n.3 (1974), enforced, 515 F.2d 334 (5th Cir. 1975).[20] Moreover, the election required by the *Amoco IV* rule does not place any onerous or costly burdens on the union. No elaborate procedures are required. The Board simply requires a vote "conducted under democratic procedures with fair notice to all concerned employees." *NLRB* v. *Newspapers, Inc.*, 515 F.2d

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[20] Of course, where every member of the bargaining unit is a union member, no special procedure is necessary. See, for example, *Insulfab Plastics, Inc.*, 274 N.L.R.B. No. 126, 119 L.R.R.M. 1086 (Mar. 11, 1985); *Gasland, Inc.*, 239 N.L.R.B. 611 (1978); *Quemetco, Inc.*, 226 N.L.R.B. 1398 (1976).

334, 339 (5th Cir. 1975); *NLRB* v. *Commercial Letter, Inc.*, 496 F.2d 35, 42 (8th Cir. 1974). And see *St. Vincent Hospital* v. *NLRB*, 621 F.2d 1054, 1059 (10th Cir. 1980).[21]

2. The Board's *Amoco IV* rule, insofar as it "mandates that a continuity determination may not be conducted until after a unit-wide vote is taken," does not, as the court below asserted, "put[] the cart before the horse" (Pet. App. 16a). That assertion is based on the premise that a change in the union's structure or organization is an internal union matter, unless it is substantial enough to create a new entity and thus raise a question concerning representation sufficient to invoke the Board's election machinery. As we have shown (pp. 22-23, *supra*), even where the change is not substantial enough to create a new entity, a union organizational change—specifically, a change in affiliation—has a sufficient potential for affecting the union's representation of the bargaining unit so that all of the employees in the unit have a legitimate interest in voting on the change.

Moreover, even if the Board's requirement of a unit-wide vote before placing its imprimatur upon a union affiliation were deemed to intrude upon what would otherwise be an internal union affair, that

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[21] As these cases recognize and the Board stated in *Amoco IV* (Pet. App. 52a), while it is not necessary that such elections "meet the standards the Board has enunciated for its own election proceedings, there are certain due process requirements which must be met in order to have a valid affiliation election." As a general matter, procedures that provide "adequate notice, time for reflection, discussion, and opportunity to vote [and] * * * reasonable efforts * * * to preserve the secrecy of the ballot" are sufficient. *Williamson Co.*, 244 N.L.R.B. 953, 955 (1979). See also *New Orleans Public Service, Inc.*, 237 N.L.R.B. 919, 920 (1978).

would not justify invalidation of the Board's requirement. This Court has recognized that union rules cannot be enforced where they run afoul of the policies of the Act. See *Pattern Makers' League* v. *NLRB*, *supra* (union rule barring resignations during a strike is contrary to the policy of voluntary unionism embodied in the Act); *NLRB* v. *Industrial Union of Marine Shipbuilding Workers*, 391 U.S. 418 (1968) (union rule requiring exhaustion of all remedies within the union before resort to any outside tribunal violates Section 8(b)(1)(A) of the Act, 29 U.S.C. 158(b)(1)(A)); see also *Scofield* v. *NLRB*, 394 U.S. 423, 430 (1969) (union rule is invalid under Section 8(b)(1)(A) if it "impairs [a] policy Congress has imbedded in the labor laws". As shown (p. 24, *supra*), the Board reasonably concluded that acceptance of a union procedure restricting affiliation votes to union members as a basis for amending the Board's certification of the exclusive representative for a bargaining unit would thwart the national labor policy favoring employee free choice of a bargaining representative.

3. Nor, contrary to the view of the court below, is the Board's new rule "unreasonably duplicative" (Pet. App. 22a). As the court notes, it is possible that, even after a majority of the unit employees have approved the affiliation in a union-conducted vote, "the Board would nonetheless call a formal unit-wide representation election if the Board found that the post-affiliation union was substantially different from the pre-affiliation union" (*ibid.*).[22] But where there

[22] Because the Union did not hold a vote open to all employees, the Board did not reach the issue of whether the affiliation here in fact did result in a lack of continuity. See p. 6, *supra*.

is a lack of continuity, a Board-conducted election is not simply another method of determining whether a majority of the unit employees want to be represented by the new entity. Rather, where the new entity is substantially different from the old entity, the old bargaining relationship has been so altered that the Board is justified in treating the situation as comparable to an initial recognition situation wherein the employer—even though it may have no reason for doubting the union's majority status—is entitled to have the representation question determined in a Board-conducted election, in which it will have an opportunity to express its views to the employees. See *Linden Lumber Division* v. *NLRB*, 419 U.S. at 305-310.

4. Finally, the court below is incorrect in its claim that the *Amoco IV* rule runs counter to the policy of promoting stable bargaining relationships (Pet. App. 19a).

To the contrary, the requirement that all unit employees have an opportunity to participate in the vote on affiliation minimizes the potential for disruption. Since employee views are obtained before the affiliation occurs, the union can base its decision on those views: if the vote is against affiliation, it can retain its independent status and its certification, while if the vote is in favor of affiliation, it can proceed with confidence that, even if the Board should later decide that a lack of continuity requires a Board-supervised election, it is likely to prevail in that election. In contrast, under the procedure required by the court, the union's affiliation may result in decertification, and the loss of the privileges of certified status, if the Board determines—after the affiliation has occurred—that lack of continuity has raised a ques-

tion of representation requiring a Board-run election, and the union loses that election.

In any event, it is the union's decision to affiliate that alters the established relationship among the certified representative, the employees, and the employer; and it is the purpose of the *Amoco IV* rule to insure that the post-affiliation relationship continues to serve the policy of stability. The rule does so by insuring that the post-affiliation organization continues to enjoy the support of the employees it represents. See *Mastro Plastics Corp.* v. *NLRB*, 350 U.S. 270, 279-280 (1956). A different procedure—one that either excludes or limits the participation of bargaining unit employees—runs a substantial risk that the post-affiliation organization does not reflect the wishes of the employees it purports to represent. In avoiding this risk, the Board's new "rule will promote stability more effectively than did its former position" (Pet. App. 26a (Wright, J., dissenting)). Moreover, if the union adheres to the *Amoco IV* rule and obtains the approval of the unit employees for its affiliation, the Board will amend its certification (absent a finding of lack of continuity), just as it would have under the old rule. A disruption of the bargaining relationship would occur only if the newly affiliated union attempted to proceed as a bargaining representative notwithstanding an unwillingness to adhere to the Board's procedures or an inability to obtain majority support in the bargaining unit.

D. The Court Below Departed From Established Principles of Judicial Review in Failing To Sustain the Board's *Amoco IV* Rule

This Court has recognized that "Congress has entrusted the Board with a wide degree of discretion in establishing the procedure and safeguards necessary to insure the fair and free choice of bargaining representatives by employees." *NLRB* v. *A.J. Tower Co.*, 329 U.S. 324, 330 (1946). Moreover, where, as here, "[t]he ultimate problem is the balancing of the conflicting legitimate interests[,] [t]he function of striking that balance to effectuate national labor policy is * * * a difficult and delicate responsibility, which the Congress committed primarily to the National Labor Relations Board, subject to limited judicial review." *NLRB* v. *Truck Drivers Union No. 4*, 353 U.S. 87, 96 (1957). Accordingly, the function of the reviewing court in this case was merely to determine whether the Board's *Amoco IV* rule was a reasonable implementation of the Act's policies, and if it was, the court was required to uphold the rule even though a different rule might have been equally reasonable. Cf. *Pattern Makers' League* v. *NLRB*, slip op. 2 (White, J., concurring). As the Fifth Circuit stated in upholding the *Amoco IV* rule, "the only question presented to the courts in an election review is whether the Board has reasonably exercised its discretion." *Local No. 4-14, Oil Workers Int'l Union* v. *NLRB*, 721 F.2d at 152. Had the court below adhered to this limited reviewing function, it would have sustained the Board's action, for, as shown (pp. 17-24, *supra*), the *Amoco IV* rule is a reasonable exercise of the Board's discretion "to insure the fair and free choice of bargaining representatives by employees" (*NLRB* v. *A.J. Tower Co.*, 324 U.S. at 330), and strikes a reasonable balance

among "conflicting legitimate interests" (*NLRB* v. *Truck Drivers Union No. 4*, 353 U.S. at 96).[23]

Nor is the Board's new rule entitled to less deference simply because it constitutes a change from previous policy. As this Court observed in *NLRB* v. *Action Automotive, Inc.*, No. 83-1416 (Feb. 19, 1985), slip op. 4 n.4: "[t]he Board's policy is not undermined by the fact that it has modified and re-

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[23] Amicus Curiae Chamber of Commerce of the United States (Chamber) contends (Br. at 14-15) that "the issuance of amended certifications [is] a discretionary administrative grant under the N.L.R.A. * * * [and] the Board's exercise of its Section 9 authority, in *toto*, is not subject to judicial review." While a Board decision in a representation proceeding is not directly reviewable in the court of appeals under Section 10(e) or (f) of the Act, 29 U.S.C. 160(e) or (f), such action is reviewable where it forms the basis for an unfair labor practice order that is before the court for review or enforcement. *AFL* v. *NLRB*, 308 U.S. 401 (1940). In this case, the Board's initial decision to amend the certification, which the Bank refused to honor, led to an unfair labor practice proceeding in which the Board issued a bargaining order. That unfair labor practice order was subject to review in the court of appeals, along with the underlying certification on which it was based. After remand by the court, the Board not only revoked the amended certification, but concluded that the Bank had not violated Section 8(a)(5) of the Act and dismissed the unfair labor practice complaint. The dismissal of the complaint by the Board was a final order reviewable in the court of appeals and the propriety of that order was dependent upon the validity of the Board's action in revoking the amended certification. In these particular circumstances, the court of appeals had jurisdiction to review the Board's revocation of the amended certification. *General Drivers, Local 886* v. *NLRB*, 179 F.2d 492 (10th Cir. 1950), cited by the Chamber (Br. at 15), is inapposite. That case involved an attempt to review the General Counsel's refusal to issue an unfair labor practice complaint. The General Counsel's refusal to issue a complaint is wholly unreviewable. See *Vaca* v. *Sipes*, 386 U.S. 171, 182 (1967).

fined its position; an agency's day-to-day experience with problems is bound to lead to adjustments." In short, "[a]n administrative agency is not disqualified from changing its mind" (*NLRB* v. *Local 103, International Association of Iron Workers*, 434 U.S. 335, 351 (1978)). When it does so, it is not the task of the reviewing court to construe the statute de novo; instead the court must decide whether "the Board has reached a fair and reasonable balance upon a question within its special competence," and whether, in reaching "its newly arrived at construction" of the Act, "the Board has adequately explicated the basis of its interpretation." *NLRB* v. *J. Weingarten, Inc.*, 420 U.S. 251, 267 (1975). Accord: *Packard Motor Car Co.* v. *NLRB*, 330 U.S. 485, 492 (1947). We submit that the Board has done so here.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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APPENDIX

The relevant provisions of the National Labor Relations Act, 29 U.S.C. 151 *et seq.*, provide in pertinent part as follows:

§ 1, 29 U.S.C. 151.

> It is declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

§ 7, 29 U.S.C. 157.

> Employees shall have the right to self-organization, to form, join, or assist labor organizations [and] to bargain collectively through representatives of their own choosing, * * * and shall also have the right to refrain from any or all of such activities.

§ 8(a), 29 U.S.C. 158(a).

> It shall be an unfair labor practice of an employer—
>
> * * * * *
>
> (5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 159(a) of this title.

§ 9, 29 U.S.C. 159.

(a) Representatives designated or selected for the purpose of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.

* * * * *

(c) (1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board—

(A) by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in subsection (a) of this section, or (ii) assert that the individual or labor organization which has been certified or is being currently recognized by their employer as the bargaining representative, is no longer a representative as defined in subsection (a) of this section; or

(B) by an employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative defined in subsection (a) of this section;

the Board shall investigate such petition and if it has reasonable cause to believe that a question

of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. * * * If the Board finds upon the record of such hearing that such question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof.

The relevant provisions of the Rules and Regulations of the National Labor Relations Board, 29 C.F.R. 101-103, provide in pertinent part as follows:

§ 102.60(b), 29 C.F.R. 102.60(b).

Petition for clarification of bargaining unit or petition for amendment of certification under section § 9(b) of the Act; who may file; where to file; withdrawal. A petition for clarification of an existing bargaining unit or a petition for amendment of certification, in the absence of a question concerning representation, may be filed by a labor organization or by an employer.

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